

EXHIBIT P

From: John Ryan <JRyan@RBDLLP.net>
Sent: Thursday, September 5, 2019 8:35 AM
To: Jon Kelley; Jeremy Fielding
Cc: Nathan Wilcox; Daniel DeCicco
Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

In this neck of the woods, a basic criminal background check by a licensed and reputable private investigator costs at least \$75.00 to \$100.00. The prorated-hourly rate for village staff to process, issue and enforce the license is at least another \$100, and that does not include the cost of compiling and maintaining the "no knock" list and dealing with resident complaints. The fee is more than reasonable and certainly not unconstitutional.

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From: Jon Kelley <jkelley@lynnllp.com>
Sent: Wednesday, September 04, 2019 5:38 PM
To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>

Cc: Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

John,

The relevant inquiry is whether the Village's fee is related solely to administrative expenses. The cases I provided each stand for that proposition, and East Rockaway's fee will be evaluated under that standard.

Aptive has paid anywhere from \$20-\$30 for a criminal background check. This leaves at least \$170 of East Rockaway's \$200 permit fee unaccounted for. What other expenses are included in the remaining \$170?

Again, please provide us with documentation or other information to substantiate the administrative expenses included in East Rockaway's \$200 per-solicitor fee.

Thanks,

Jon

From: John Ryan <JRyan@RBDLLP.net>

Sent: Wednesday, September 4, 2019 2:32 PM

To: Jon Kelley <jkelly@lynnllp.com>; Jeremy Fielding <jfielding@lynnllp.com>

Cc: Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

Your e-mail does not respond to mine of 9/2. None of the cases cited are similar. Have you even undertaken to determine the cost of a criminal background check? What municipalities in this area of New York State charge a fee of \$25-\$50? As you know, \$200 is the fee under the revised Floral Park Code.

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From: Jon Kelley <jkelly@lynnllp.com>

Sent: Wednesday, September 04, 2019 2:28 PM

To: John Ryan <JRyan@RBDLLP.net>; Jeremy Fielding <jfielding@lynnllp.com>

Cc: Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

John,

We've sent you several emails and cited a litany of cases, all of which make this point. I've copied these cases again, below:

Ne. Ohio Coalition for the Homeless v. City of Cleveland, 105 F.3d 1107, 1109 (6th Cir. 1997) (generally, the government may not tax the exercise of a constitutionally protected right). For a license fee to be permissible under the First Amendment, a municipality may charge no more than the amount necessary to cover administrative costs. *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941) (no constitutional infirmity in license fee limited to expense incident to administration of statute and maintenance of public order in the matter licensed); *Baldwin v. Redwood City*, 540 F.2d 1360, 1371–72 (9th Cir. 1976); *Jacobsen v. Harris*, 869 F.2d 1172, 1174 (8th Cir. 1989); *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992); *Big Hat Books v. Prosecutors*, 565 F.Supp.2d 981 (S.D. Ind. 2008) (finding \$250 fee – even if only paid once – to be an unconstitutional restriction on free speech); *Ohio Citizen Action v. City of Mentor-on-the-Lake*, 272 F. Supp.2d 671 (N.D. Ohio 2003); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241 (10th Cir. 2000); *Collin v. Smith*, 447 F.Supp. 676 (N.D. Ill. 1978).

The common holding across these cases is that a municipality cannot charge a fee for the issuance of a license to engage in commercial speech unless that fee covers administrative expenses, only. If the fee exceeds administrative expenses, courts have uniformly held that this constitutes an unconstitutional tax on first amendment speech.

Of the hundreds of municipalities we've interacted with over the past years, the average fee required

to cover administrative expenses for solicitation permits is between \$20-\$50. For this reason, it's difficult for us to understand how East Rockaway's administrative costs could somehow be more than *three times* higher than what we've seen on average.

If the Village's expenses truly are this high, however, we want to know. This is why we've invited you before – and why I'm inviting you again, now – to provide us with some documentation substantiating your claim that East Rockaway's \$200 solicitation permit fee is necessary to cover the Village's administrative expenses. The last thing we want is to litigate this if the Village can explain why it's fee is so high, and justify that with underlying documentation. But if the Village cannot do so, or refuses to do so, we will have no choice but to amend our pleadings to challenge the fee.

Thanks,
Jon

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Monday, September 2, 2019 12:56 PM
To: Jeremy Fielding <jfielding@lynnllp.com>
Cc: Jon Kelley <jkelley@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

If you have a case that indicates that the proposed \$200 fee, which includes the costs, inter alia, of a criminal background check, processing and potential expense of enforcement, I would be happy to look at it. Ending this case, just like bringing it, has always been your decision.

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From: Jeremy Fielding <jfielding@lynnllp.com>
Sent: Monday, September 02, 2019 1:39 PM
To: John Ryan <JRyan@RBDLLP.net>
Cc: Jon Kelley <jkelley@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: Re: Aptive v. East Rockaway; Defendant's Initial Disclosures

Understood.

Of course, this just means more litigation and more fees, John. Especially when the cases we've provided you clearly indicate this fee amount is excessive and unconstitutional. We'd really prefer to get this case put behind us so both parties can move on. Indeed, we preferred not to bring this case in the first place.

But the choice is clearly yours, not ours.

Sent from my iPad

On Sep 2, 2019, at 12:25 PM, John Ryan <JRyan@rbdllp.net> wrote:

The proposed new law contains a \$200 license fee. If your client seeks to amend its complaint, the Village will oppose.

John E. Ryan, Esq.

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From: Jeremy Fielding <jfielding@lynnllp.com>

Sent: Monday, September 02, 2019 1:19 PM

To: John Ryan <JRyan@RBDLLP.net>

Cc: Jon Kelley <jkelley@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: Re: Aptive v. East Rockaway; Defendant's Initial Disclosures

John:

I want to reiterate what we've said previously: that if the village passes the ordinance in its present form with a \$250 registration fee, we'll be forced to amend our suit and seek injunctive relief with respect to that fee.

Does the village intend to nevertheless pass the ordinance with that fee?

Respectfully,

Jeremy

Sent from my iPad

On Sep 2, 2019, at 12:12 PM, John Ryan <JRyan@rbdllp.net> wrote:

Since the new law will be adopted next Monday initial disclosures will be served by the Village the following day, which will include a request that the action be discontinued as moot.

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From: Jon Kelley <jkelley@lynnllp.com>

Sent: Friday, August 30, 2019 4:45 PM

To: John Ryan <JRyan@RBDLLP.net>

Cc: Jeremy Fielding <jfielding@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>

Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

John,

Aptive agrees to give East Rockaway an extension until next Friday to serve its disclosures. If the disclosures are not served by next Friday, we will move to compel.

Thanks,

Jon

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From: John Ryan <JRyan@RBDLLP.net>
Sent: Friday, August 30, 2019 12:53 PM
To: Jon Kelley <jkelley@lynnllp.com>
Cc: Jeremy Fielding <jfielding@lynnllp.com>; Nathan Wilcox
<n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

Next week.

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From: Jon Kelley <jkelly@lynnllp.com>
Sent: Friday, August 30, 2019 1:24 PM
To: John Ryan <JRyan@RBDLLP.net>
Cc: Jeremy Fielding <jfielding@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: RE: Aptive v. East Rockaway; Defendant's Initial Disclosures

John,

Following up on this. When will East Rockaway serve its initial disclosures? The rules required service of these disclosures two weeks ago, but to date we have received nothing.

Please let us know when East Rockaway will serve its disclosures or we will consider the issue ripe for a motion to compel.

Thanks,
Jon

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From: Jon Kelley
Sent: Tuesday, August 20, 2019 9:46 AM
To: John Ryan <JRyan@RBDLLP.net>
Cc: Jeremy Fielding <jfielding@lynnllp.com>; Nathan Wilcox <n.wilcox@goaptive.com>; Daniel DeCicco <ddecicco@deyblp.com>
Subject: Aptive v. East Rockaway; Defendant's Initial Disclosures

John,

Yesterday was the deadline for the parties to serve initial disclosures under Rule 26, but we have not received a copy of East Rockaway's disclosures.

When can we expect Defendant will serve its initial disclosures?

We understand you are on vacation and are glad to agree to an extension if one is needed. Please just let us know what date East Rockaway's initial disclosures will be served.

Thanks,

Jon

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